

ASSEMBLY BILL

No. 2166

Introduced by Assembly Member Bonta

February 20, 2014

An act to amend Section 8200 of the Probate Code, relating to estates and trusts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2166, as introduced, Bonta. Decedents' estates: administration: custodians of wills.

Existing law requires the custodian of a will, within 30 days after having knowledge of the death of the testator, unless a petition for probate of the will is earlier filed, to deliver the will to the clerk of the superior court of the county in which the estate of the decedent may be administered and to mail a copy of the will to the executor or a beneficiary, as specified. Existing law imposes a fee for delivering a will to the clerk of the superior court and requires reimbursement of this fee from the estate if an estate is commenced for the decedent named in the will.

This bill would revise the above-described delivery provisions to require the original custodian of a will to either deliver the will to a named executor or beneficiary, as specified, or deliver the will to the clerk and mail a copy to the executor or beneficiary. The bill would require the named executor or beneficiary who receives a will from the original custodian with a specified notification to, within 30 days of receipt, deliver the will to the clerk and, if the recipient of the will is a beneficiary, mail a copy of the will to the named executor, if the whereabouts of the executor is known.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 8200 of the Probate Code is amended to read:

8200. (a) Unless a petition for probate of the will is earlier filed, the original custodian of a will shall, within 30 days after having knowledge of the death of the testator, do ~~both~~ *either* of the following:

(1) *Deliver the will to the person named in the will as executor if this person's whereabouts is known to the original custodian or, if not known, to the person named in the will as a beneficiary, if this person's whereabouts is known to the original custodian. This delivery shall be made either by personal service with proof of service or by mail with return receipt. When delivery is made, the will shall have attached to it the following notification in not less than 10-point boldfaced font or a reasonable equivalent thereof:*

"As the successor custodian of the decedent's will, you have a duty pursuant to Section 8200 of the Probate Code to deliver the will within 30 days of receipt to the superior court of the county in which the estate of the decedent may be administered. Additionally, if you are not the person named in the will as executor, but know the whereabouts of the person who is named in the will as executor, you are required to mail a copy of the will to the person named as executor."

(2) *If for any reason the original custodian has not delivered the will to either the person named in the will as executor or as a beneficiary or the delivery did not comply with paragraph (1), the original custodian shall do both of the following:*

~~(1)~~
(A) Deliver the will to the clerk of the superior court of the county in which the estate of the decedent may be administered.

~~(2)~~
(B) Mail a copy of the will to the person named in the will as executor, if the person's whereabouts is known to the custodian,

1 or if not, to a person named in the will as a beneficiary, if the
2 person's whereabouts is known to the custodian.

3 *(b) Unless the petition for probate of the will is earlier filed,*
4 *the successor custodian of a will who is named in the will as an*
5 *executor or beneficiary and who received the will with the*
6 *notification described in subdivision (a) attached shall, within 30*
7 *days of receipt of the will from the original custodian, deliver the*
8 *will to the clerk of the superior court of the county in which the*
9 *estate of the decedent may be administered and, if the successor*
10 *custodian is a beneficiary, mail a copy of the will to the person*
11 *named in the will as executor, if the person's whereabouts is known*
12 *to this custodian.*

13 ~~(b)~~

14 *(c) A custodian of a will, including an executor or beneficiary*
15 *who is in receipt of a will with the notification described in*
16 *subdivision (a) attached, who fails to comply with the requirements*
17 *of this section shall be liable for all damages sustained by any*
18 *person injured by the failure.*

19 ~~(c)~~

20 *(d) The clerk shall release a copy of a will delivered under this*
21 *section for attachment to a petition for probate of the will or*
22 *otherwise on receipt of payment of the required fee and either a*
23 *court order for production of the will or a certified copy of a death*
24 *certificate of the decedent.*

25 ~~(d)~~

26 *(e) The fee for delivering a will to the clerk of the superior court*
27 *pursuant to ~~paragraph (1) of subdivision (a) or (b)~~ shall be as*
28 *provided in Section 70626 of the Government Code. If an estate*
29 *is commenced for the decedent named in the will, the fee for any*
30 *will delivered pursuant to ~~paragraph (1) of subdivision (a) or (b)~~*
31 *shall be reimbursable from the estate as an expense of*
32 *administration.*